

# EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Siteone Landscape Supply, LLC, . Docket #CV-23-2084 (GRB) (ST)  
Plaintiff, .  
V. . United States Courthouse  
Nicholas Giordano, et al., . Central Islip, New York  
Defendants. . February 27, 2024  
..... 3:46 p.m.

TRANSCRIPT OF PRE-MOTION CONFERENCE  
BEFORE THE HONORABLE GARY R. BROWN  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Plaintiff:

Kevin P. Mulry, Esq.  
Farrell Fritz, PC  
400 RXR Plaza  
Uniondale, NY 11556

Evan Gibbs, Esq.  
Troutman Pepper Hamilton  
Sanders, LLP  
Ste. 3000  
600 Peachtree Street, NE  
Atlanta, GA 30208

Daniel Gorman, Esq.  
Troutman Pepper Hamilton  
Sanders, LLP  
875 Third Ave.  
New York, NY 10022

For The Defendants:

(Dominick Caroleo, The  
Garden Dept. Corp., 3670  
Route 112, LLC,  
9 4th St., LLC)

Michael C. Mule, Esq.  
Milman Labuda Law Group, PLLC  
3000 Marcus Ave.-Ste. 3w8  
Lake Success, NY 11556

Robert Milman, Esq.  
Milman Labuda Law Group, PLLC  
3000 Marcus Ave.-Ste. 3w8  
Lake Success, NY 11556

(Nicholas Giordano, Victor  
Caroleo, Narrow Way Realty,  
Ltd., Narrow Way 2, LLC,  
Group 5 Associates, Ltd.,  
Scapes Supply, LLC and  
Neway Management, LLC)

Julie E. Cohen, Esq.  
Skadden Arps Slate Keagher  
& Flom, LLP  
One Manhattan West  
New York, NY 10001

Saul D. Zabell, Esq.  
Zabell & Collotta, PC  
One Corporate Dr.-Ste. 103  
Bohemia, NY 11716

Audio Operator:

Transcribing Firm:

Writer's Cramp, Inc.  
1027 Betty Lane  
Ewing, NJ 08628  
609-588-8043

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

## 1 (Proceeding in progress)

2 THE CLERK: -- 3-2084, Siteone Landscape Supply, LLC  
3 vs. Giordano, et al. Counsel, please state your appearance  
4 for the record. Plaintiff goes first.

5 MR. MULRY: For the Plaintiff, Kevin Mulry from  
6 Farrell Fritz. Good morning, Your Honor. Good afternoon,  
7 Your Honor.

8 THE COURT: Morning. Good afternoon.

9 MR. MULE: Good afternoon, Your Honor. Michael  
10 Mule, Milman Labuda Law Group, along with my partner, Rob  
11 Milman, on behalf of Defendants, Dominick Caroleo, The Garden  
12 Department, Corp., 3670 Route 112, LLC, and 9 4th Street, LLC.

13 MS. COHEN: Good afternoon, Your Honor. Julie Cohen  
14 from Skadden Arps, on behalf of Defendants Nicholas Giordano,  
15 Vic Caroleo, Narrow Way Realty, Ltd., Narrow Way 2, LLC, Group  
16 5 Associates, Ltd., Scapes Supply, LLC, and New Way  
17 Management, LLC.

18 MR. ZABELL: Good afternoon, Judge. Saul Zabell. I  
19 represent the same individuals Ms. Cohen just identified.

20 MR. GIBBS: Good afternoon (indiscern.).

21 THE COURT: (indiscern.)

22 MR. GIBBS: Evan Gibbs.

23 THE COURT: Okay. Go ahead.

24 MR. GIBBS: I'm sorry, Your Honor.

25 THE COURT: (indiscern.)

1                   MR. GIBBS: I had trouble getting my phone off of  
2 mute, but this is Evan Gibbs, appearing on behalf of  
3 Plaintiff, Siteone, and I'm here with my colleague, Dan  
4 Gorman, as well.

5                   THE COURT: Okay. Anybody else? Sounds like we've  
6 got everyone. All right. This is Judge Brown. There's a  
7 Pre-Motion Conference we're on for here, and as you know from  
8 my rules and the orders establishing this conference, I don't  
9 stop anyone from making a Motion. You can make any Motion you  
10 like, however, I do reserve the right -- If I think we can  
11 resolve this here, to deem the Motion made and resolve it. So  
12 feel free to argue anything you want. With that said, I'll  
13 hand it off. Who would like to take the lead for the  
14 Defendants making (indiscern.) the Motion?

15                  MR. MULE: Your Honor, it's Michael Mule. I'd like  
16 to begin on behalf of my clients, if I may?

17                  THE COURT: Okay.

18                  MR. MULE: Okay?

19                  THE COURT: Sure.

20                  MR. MULE: All right. Great. Your Honor, I  
21 represent the Defendants Dominick Caroleo, The Garden  
22 Department Corp, 3670 Route 112, and 9 4th Street, LLC. The  
23 facts in this case, despite the long Complaint, are really  
24 rather simple. Siteone's a multi-national, publicly traded  
25 landscape supply company. They acquired one Defendant in this

The Court - Finding

32

1       There were references to the sales data. Certainly Mr. Don  
2       Caroleo set up a app that had a website, and I think there's  
3       arguments that this was a public website. This is not a  
4       website that's on The Garden Department website so that  
5       everybody can look in and see how much in sales did the store  
6       do today, and let's compare that historically to last year,  
7       and let's look month-to-month, and look year-to-year. That,  
8       with respect to sales data, plus other information, did give a  
9       competitive advantage, and we say that the allegations of the  
10      amended Complaint fully support the claims under the Trade  
11      Secrets Act, and the Computer Fraud Abuse Act. I'll stop  
12      there. If the Court has specific questions, I'm happy to  
13      respond to those.

14                  THE COURT: All right. Is that it, Mr. Mulry? Are  
15      you done?

16                  MR. MULRY: Yes, Your Honor.

17                  THE COURT: Excellent. All right. Well, I've heard  
18      enough, and what I'll say is this. I think Counsel did a fine  
19      job today, an excruciatingly fine job. I have every detail of  
20      the argument on the record. More importantly, as I've been  
21      reminded, and of course I recall, I've seen extensive briefing  
22      on this case in the context of the Preliminary Injunction  
23      proceedings, and as such I believe I'm in any position to rule  
24      on this without further delay to this case, which has already  
25      been substantially delayed in a sense, and I don't think

1     that's anyone's fault, but it has just taken a while to get  
2     our arms around these various issues, so I'm going to deem the  
3     Motions made, and I'm going to decide them now. Will not be  
4     issuing a written decision. The decision will be on the  
5     record, but I will say that as part of this decision, I've  
6     incorporated everything that was put forth in the parties'  
7     letter briefs to the Court, which were quite good and  
8     thorough, as well as the argument today, which were detailed  
9     down to LEXIS citations, so we have quite an impressive  
10    record.

11           With that said, of course which before the Court is a Rule  
12    12 Motion to Dismiss the Complaint on the grounds that it  
13    fails to state a cause of action. I will not belabor the  
14    record with the standard here, because you all know it quite  
15    so very well. The answer of course is that taking all drawn  
16    inferences and (indiscern.) non-movement here the Plaintiff,  
17    and question me, and assuming the allegations to be true for  
18    these purposes, are there sufficient allegations to go forward  
19    with claims that satisfy both Rule 8, as well as in certain  
20    instances in this case there are elements of 9(b), but it's  
21    mainly Rule 8. Either way. But Defendant claims that the  
22    allegations are insufficient. Of course the Court had issued  
23    several decisions on this case, and in those Petitions the  
24    Plaintiff did not prevail in getting Preliminary Injunctive  
25    Relief. Of course (indiscern.) is adjudged by a completely

1 different standard. The standard there is that it's quite  
2 extraordinary, because Preliminary Injunctions involve  
3 extraordinary efforts and extraordinary exercise of power by  
4 the Court.

5 This is a different situation. The question is, does  
6 this Complaint -- it's a 55-page Complaint here -- satisfy  
7 Rule 8(b) notice in absolute (indiscern.) the Rule 8, and I  
8 would say that in the instances where 9(b) an analysis is  
9 required, it satisfies 9(b) as well. Therefore, I'm deeming  
10 the Motions made and denied. So I'm denying the Motions to  
11 Dismiss, and the case can move forward. Now let's get to  
12 that, because that to me is the most important thing. I would  
13 like to -- I will leave to Magistrate Tiscione done a fine job  
14 in this case, the management of the Discovery, but I do think  
15 that this has to be put on a rapid path in Discovery. I think  
16 we have to get this to completion rapidly, because it's an  
17 important ongoing business concern. So with that in mind, I'd  
18 love to hear the parties' input as to what you think a  
19 reasonable Discovery schedule would look like. Let me start  
20 with the Plaintiff. Mr. Mulry, what do you think in terms of  
21 how long should it take to go from this point where we're  
22 denying Motion to Dismiss, to the point where we're ready for  
23 the next step, (indiscern.) or the Summary Judgment, or trial,  
24 or whatever?

25 MR. MULRY: Well, Judge, one thing I'll preface that